STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

| | | |
|---|---|---|
| In the Matter of: | ) | Docket No. 01-AFC-21 |
| | ) | |
| Application For Certification of the | ) | COMMISSION STAFF'S |
| Tesla Power Project | ) | RESPONSE TO PETITIONS |
| | ) | FOR RECONSIDERATION |
| | ) | |
| | ) | |

The Energy Commission Staff ("staff") opposes the Petitions for Reconsideration ("Petitions") of Intervenors Robert Sarvey ("Sarvey") and Californians for Renewable Energy (CARE) and Sarvey's Motion to Compel a Cumulative Air Quality Analysis ("Motion") for the following reasons, as well as those previously stated in the various briefs, comments and testimony in this case.

The underlined headings below are the major points raised by Intervenors Sarvey and CARE, which are followed by a discussion of the evidence in the record that supports the Commission Decision on those points.

Motion to Compel a Cumulative Air Quality Analysis. Mr. Sarvey believes that a Data Request filed on February 16, 2003 (Ex. 81; Docket #28086) related to the cumulative air quality analysis remains unanswered. Staff filed its response to this Data Request on March 4, 2003 (Ex. 56; Docket #30230).

In the March 4, 2003 response, staff explained that only by achieving full mitigation of project emissions would the cumulative effects of the project be reduced to less than significant levels (Ex. 56). The scope and methodology of the analysis were widely debated during the hearings (RT 9/18/03 p. 368-371; RT 4/8/04 p. 146-148, p. 151-153, p. 176-178, and p. 185), and although Mr. Sarvey disagrees with the methodology employed by staff, the record indicates that the analysis was completed many months ago and the response to the Data Request has been provided.

Further, the Final Staff Assessment released April 8, 2003 included a cumulative assessment (Ex. 51 p. 4.1-49 to 50). Although it does not appear that either the Committee or the Commission has formally ruled upon the Motion, the Committee's decision to go forward with evidentiary hearings and preparation of a proposed decision, along with the Commission's adoption of that proposed decision, constitute a de-facto denial of the motion. During the hearings and review of the proposed decision, Mr. Sarvey has had ample opportunity to, and in fact did, raise his concerns about the adequacy of the cumulative impact analysis.

Classification of San Joaquin County as $PM_{2.5}$ Nonattainment Area. The $PM_{2.5}$ nonattainment designations were in the process of being formalized throughout this proceeding. Staff showed that the project setting includes violations of the annual $PM_{2.5}$ standards (Ex. 51 p. 4.1-15 to 17), and staff demonstrated that the $PM_{2.5}$ trends are indeed seasonal (Ex. 51 p. 4.1-17, Figure 3). Staff accordingly conducted the impact assessment to address $PM_{2.5}$ impacts (Ex. 51 p. 4.1-42 and p. 4.1-44 to 48). No air management agency yet has a strategy for these impacts (Ex. 54 p. 2; RT 9/18/03 p. 206-209; RT 9/18/03 p. 157-158). Final nonattainment designations will not be determined by U.S. EPA until late 2004. Given this timeline, the San Joaquin Valley Air Pollution Control District (SJVAPCD) has until late 2005 before it would establish any control strategies for $PM_{2.5}$.

In the absence of any $PM_{2.5}$ control recommendations from the air agencies, staff developed a case-specific mitigation strategy. Consistent with SJVAPCD recommendations for other pollutants, staff developed mitigation to ensure that $PM_{2.5}$ reductions occur during the months when short-term violations are most severe (RT 9/18/03 p. 235-237; Ex. 54 p. 6-7; Ex. 124 p. 4-5). Staff also improved the $PM_{2.5}$ mitigation by discounting much of the applicant's proposed $PM_{10}$ mitigation (Ex. 51 p.4.1-42 to 43; Ex. 53 p. 3; Ex. 54 p. 4-5; and RT 9/18/03 p. 244:5-19).

The seasonal approach recommended by staff originated with the SJVAPCD in the Air Quality Mitigation Agreement ("AQMA") for $PM_{10}$ and $NO_x$ (Ex. 22; Ex. 53 p. 3; Ex. 54 p.3-6). Using the AQMA, the SJVAPCD determined that providing mitigation during the nonattainment months would sufficiently minimize the impacts, including those to annual average concentrations. Staff agreed with this aspect of the AQMA (Ex. 53 p.2-3; RT 4/8/04 p. 268-270) and found the impacts during other months to be less than significant (Ex. 51 p. 4.1-45; Ex. 124 p. 6; RT 9/18/03 p. 249:7-25, p. 250:1-20; RT 4/8/04 pp. 265-270).

Staff recommended Condition of Certification AQ-C7 to supplement the AQMA (RT 9/18/03 p.241:10-25, p.242:1-11, p. 243-244; Ex. 54 p. 2-4; Ex. 124 p. 4-6). The 70 percent factor favored by staff for emission reduction credits (ERCs) originating in the Pittsburg/Antioch area is just one component of staff's complicated impact assessment that was developed to address effectiveness of the ERC package in conjunction with the AQMA (Ex. 51 p. 4.1-39 to 41). Like the Tesla site, Pittsburg and Antioch are east of the mountains that separate the Bay Area and San Joaquin Valley air basins, putting those reductions in close proximity to Tesla. As such it is reasonable to expect a high level of effectiveness from these ERCs (RT 9/18/03 p. 245-247; Ex. 53 p. 2). Staff independently reviewed the data from the East Altamont case supporting this factor in June 2002. Intervener CARE claims that no party supports use of the 70 percent factor, yet no air management agency suggested any alternative to this factor after it was first offered in the Preliminary Staff Assessment in 2002.

The Bay Area Air Quality Management District ("BAAQMD") recognized that the mitigation recommended by Energy Commission staff had to balance the above issues and deferred to staff's conclusion on the adequacy of the mitigation (RT 9/18/03 p. 216:14-17). The record demonstrates that with AQ-C7, the mitigation for all pollutants

would be more stringent than that recommended by the local air management agencies, and the project would mitigate $PM_{2.5}$ impacts to less than significant levels (RT 9/18/03 p. 233:12-25, p. 234:1-13; Ex. 124).

Consistency with Local Air Quality Management Plan. Compliance with the Conditions of Certification, including those identified by the BAAQMD and the SJVAPCD recommendations for mitigation eliminates any potential conflicts with air quality management plans. There is no established plan for $PM_{2.5}$, and mitigation recommended by staff for $PM_{10}$ would be more stringent than the recommendations provided by SJVAPCD for this case (Ex. 53 p. 3-4; Ex. 54 p.4-6). Staff also demonstrated that the mitigation recommended by staff would provide similar benefits as compliance with SJVAPCD rules, if they had been applicable (Ex. 51 p. 4.1-48 and 49; Ex. 54 p. 6).

Mitigation for Carbon Monoxide. The BAAQMD determined that a CO emission level of 4.0 parts per million would satisfy the requirements for Best Available Control Technology (Ex. 23 p. 12-13; also see Condition AQ-24(d)). The staff assessment reviewed this determination and does not dispute it. Throughout 2003, the South Coast Air Quality Management District (SCAQMD) recommended a range of CO BACT levels between 2 ppm and 4 ppm. The Inland Empire case was approved by the SCAQMD after the Magnolia case identified by Intervenor CARE, and that determination included a CO level of 4.0 ppm with duct burners operating, the same as the BAAQMD determination in this case. Staff also reviewed the impacts and found that the CO emissions would cause no potentially significant environmental impacts; therefore no additional mitigation was required (Ex. 51 p. 4.1-31).

Mitigation for Ammonia Slip. Throughout this proceeding and other recent cases, Staff recommended a 5 ppm ammonia slip as the level necessary to achieve a less than significant impact (RT 4/8/04 p. 153-155 and p. 172:3-16). Although not applicable to Tesla, this is equivalent to the level specified for the recent Inland Empire case in the SCAQMD, the only region where ammonia is regulated as a criteria pollutant (RT 4/8/04 p. 166). The use of aqueous ammonia is a plant expense that Tesla will strive to minimize for economic reasons, an additional incentive to operate the plant with the lowest possible ammonia slip. Staff is not confident that Tesla could achieve 2 ppm ammonia slip while achieving all other permit limits, but Staff is confident that Tesla will be able to keep slip levels well below 5 ppm (Ex. 51 p. 4.1-27; RT 4/8/04 p. 194-195).

Cumulative Health Risk of PM2.5 Impacts. Because $PM_{2.5}$ is a criteria pollutant managed as an air quality resource, it does not require a risk assessment as a public health issue. Staff developed rigorous mitigation recommendations for $PM_{10}$ with a specific focus on $PM_{2.5}$ to ensure that the project would not substantially contribute to existing violations of the Ambient Air Quality Standards, levels that have been established to protect the health of even the most sensitive individuals.

Compliance with the Williamson Act. The petitioners argue that the Commission should not accept Alameda County's determination that this project complies with the Williamson Act. They offer no alternative finding or citation to supporting evidence in

the record, however. The Commission Decision reflects its consideration of the previous evidence and argument on this point and we find no reason to modify it.

Conclusion. For the above reasons, staff recommends that the Petitions be denied and that the Commission's order clarify that Mr. Sarvey's Motion was and is denied.

DATED: August 5, 2004

Respectfully submitted,

_____

PAUL A. KRAMER JR
Senior Staff Counsel